

1 RONALD RUS, #67369
rrus@rusmiliband.com
2 LEO J. PRESIADO, #166721
lpresiado@rusmiliband.com
3 RUS, MILIBAND & SMITH
A Professional Corporation
4 Seventh Floor
2211 Michelson Drive
5 Irvine, California 92612
Telephone: (949) 752-7100
6 Facsimile: (949) 252-1514

7 Attorneys for Plaintiff
ENOUGH FOR EVERYONE, INC.

Michael A. Taitelman (SBN 156254)
mtaitelman@ftllp.com
David M. Marmorstein (SBN 192993)
dmarmorstein@ftllp.com
FREEDMAN & TAITELMAN, LLP
1901 Avenue of the Stars, Suite 500
Los Angeles, CA 90067
Telephone: (310) 201-0005
Facsimile: (310) 201-0045

J. Michael Huget (Michigan State Bar
No. #P39150
Admitted Pro Hac Vice)
mhuget@honigman.com
Roger P. Meyers (Michigan State Bar
No. #P73255
Admitted Pro Hac Vice)
rmeyers@honigman.com
HONIGMAN MILLER SCHWARZ
AND COHN LLP
130 S. First Street, 4th Floor
Ann Arbor, MI 48104
Telephone: (734) 418-4254
Facsimile: (734) 418-4255

13
14 Attorneys for Defendant
15 PROVO CRAFT & NOVELTY, INC.
16
17

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 ENOUGH FOR EVERYONE, INC.,
21 a California corporation,

22 Plaintiff,

vs.

23 PROVO CRAFT & NOVELTY,
24 INC., a Utah corporation,

25 Defendant.

CASE NO. SACV11-01161-DOC
(MLGx)

[PROPOSED] PROTECTIVE
ORDER

26
27 **IT IS HEREBY ORDERED** pursuant to the stipulation of the parties,
28 Plaintiff Enough For Everyone, Inc. ("Plaintiff") and Defendant Provo Craft &

1 Novelty, Inc. (“Defendant”) through their respective counsel, which is on file with
2 this Court, that a Protective Order be issued in this action regarding certain
3 documents and information produced during discovery. The parties hereto intend to
4 produce documents, respond to written discovery and provide certain testimony
5 which may contain or constitute highly confidential, non-public financial
6 information. The parties desire that the Confidential Material be protected by virtue
7 of designating such material as confidential and restricting its dissemination.

GOOD CAUSE

9 The parties stipulate that for the purposes of the pending litigation between
10 Plaintiff and Defendant, Case Number SACV11-01161-DOC (MLGX) (the
11 “Action”), and to facilitate discovery in this case, and specifically to facilitate the
12 discovery of any trade secrets, confidential information, or sensitive business or
13 technical information, the parties, through their attorneys, request that this Court
14 enter an order containing the terms set forth below (the “Protective Order”) regarding
15 the treatment of information disclosed during discovery.

16 The parties stipulate that good cause exists for the entry of a protective order,
17 as disclosure of the parties' Confidential Information (as that term is defined below)
18 would cause substantial financial and business harm to the parties. The parties
19 maintain confidential documents concerning manufacturing, sales, costs' of goods,
20 customer lists, profits, marketing plans, and ideas for new products. Discovery may
21 involve some or all of such information.

22 The parties further stipulate that public disclosure of the parties' Confidential
23 Material (as defined below) may provide third-party competitors with a significant
24 unfair advantage vis-à-vis the parties to this Action. Thus, absent a protective order
25 that facilitates confidential discovery, the parties would likely suffer significant
26 financial and business losses.

27 The parties stipulate and this Court hereby orders that the following
28 provisions shall govern in this matter:

DEFINITIONS

1. As used in this Protective Order,

3 a. “Designating Party” means any Person who designates Material
4 as Confidential Material.

5 b. “Discovering Counsel” means counsel of record for a
6 Discovering Party.

c. "Discovering Party" means the Party to whom Material is being
Provided by a Producing Party.

9 d. “Confidential Material” means any material designated as
10 CONFIDENTIAL, in accordance with the terms of this Protective Order.

11 e. “Material” means any document, testimony or information in any
12 form or medium whatsoever, including, without limitation, any written or printed
13 matter, Provided in this action by a Party before or after the date of this Protective
14 Order.

15 f. "Party" means the Parties to this action, their attorneys of record
16 and their agents.

17 g. “Person” means any individual, corporation, partnership,
18 unincorporated association, governmental agency, or other business or governmental
19 entity whether a Party or not.

20 h. “Producing Party” means any Person who Provides Material
21 during the course of this action.

22 i. "Provide" means to produce any Material, whether voluntarily or
23 involuntarily, whether pursuant to request or process.

CONFIDENTIAL DESIGNATION

25 2. A Producing Party may designate as "CONFIDENTIAL" any Material
26 provided to a Party which contains or discloses any of the following:

27 a. Non-public insider information, personnel files, financial
28 information, trade secrets, confidential commercial information, proprietary

1 information, or other confidential or sensitive information which the Producing Party
2 determines in good faith should be kept confidential; and

3 b. Information that the Party is under a duty to preserve as
4 confidential under an agreement with or other obligation to another Person.

5 3. A Producing Party shall designate as "CONFIDENTIAL" Materials
6 which the Producing Party in good faith believes are entitled to protection pursuant
7 to the standards set forth in Paragraph 2 of this Order. A Producing Party may
8 designate Confidential Material for protection under this order by one of the
9 following methods:

10 a. By marking it with the following inscription prior to Providing it
11 to a Party: "CONFIDENTIAL".

12 b. In the case of electronic systems or information Provided or
13 made accessible in native format, by informing the Discovering Party in writing that
14 the Confidential Material has been Provided or made accessible subject a designation
15 as "CONFIDENTIAL" under this order.

16 c. By identifying with specificity in writing to the Discovering
17 Party any previously Provided Material which was not designated as Confidential
18 Material prior to its having been Provided. For purposes of this method of
19 designation, it will be a sufficiently specific identification to refer to the bates
20 numbers or deposition page numbers of previously Provided Material. Where a
21 Producing Party designates previously Provided Material as Confidential Material
22 pursuant to this subparagraph, the Producing Party will follow the procedures set
23 forth in the previous subparagraph for designating Confidential Material, and Provide
24 to the Discovering Party additional copies of the previously Provided Material
25 marked with the inscription described in the previous subparagraph. Upon receipt of
26 the additional copies which comply with the procedures set forth in the previous
27 subparagraph, the Discovering Party will immediately return to the Producing Party
28 the previously Provided Material, or alternatively, will destroy all the previously

1 Provided Material, at the option of the Producing Party. For previously Provided
2 Material which was not designated as Confidential Material at the time of its being
3 provided, this Protective Order shall apply to such materials beginning on the date
4 that the Producing Party makes such designation.

5 All costs associated with the designations of materials as
6 “CONFIDENTIAL” involving, for example, the cost of binding confidential portions
7 of deposition transcripts, shall be initially borne by the Party making the designation
8 with no prejudice regarding the Designating Party’s ability to recover its costs upon
9 completion of the litigation.

10 For good cause and with reasonable notice, any Designating Party may
11 redesignate (or withdraw a designation regarding) any material (“Redesignated
12 Material”) that it, he or they have produced; provided, however, that such
13 redesignation shall be effective only as of the date of such redesignation. Such
14 redesignation (or withdrawal) shall be accomplished by notifying counsel for each
15 party in writing of such redesignation (or withdrawal). Upon receipt of any such
16 written redesignation, counsel of record shall not make any further disclosure or
17 communication of such Redesignated Material except as provided for in this
18 Protective Order.

19 **RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

20 4. Confidential Material shall not be disclosed, nor shall its contents be
21 disclosed, to any person other than those described in Paragraph 7 of this Protective
22 Order and other than in accordance with the terms, conditions and restrictions of this
23 Protective Order.

24 5. Confidential Material Provided by a Producing Party to a Discovering
25 Party shall not be used by the Discovering Party or anyone other than the Producing
26 Party, specifically including the persons identified in Paragraph 7 as appropriate, for
27 any purpose, including, without limitation any personal, business, governmental,
28 commercial, publicity, public-relations, or litigation (administrative or judicial)

1 purpose, other than the prosecution or defense of this action.

2 6. All Confidential Material shall be kept secure by Discovering Counsel
3 and access to Confidential Material shall be limited to persons authorized pursuant to
4 Paragraph 7 of this Protective Order.

5 7. For purposes of the preparation of this action, and subject to the terms,
6 conditions, and restrictions of this Protective Order, Discovering Counsel may
7 disclose Confidential Material or its contents only to the following persons:

8 a. Counsel of record working on this action on behalf of any party
9 and counsel's employees who are directly participating in this action, including
10 counsel's partners, associates, paralegals, assistants, secretaries, and clerical staff.

11 b. In-house counsel and such in-house counsel's employees who
12 are directly participating in this action, including counsel's paralegals, assistants,
13 secretaries, and clerical staff.

14 c. Court and deposition reporters and their staff.

15 d. The Court and any Person employed by the Court whose duties
16 require access to Confidential Material.

17 e. The Special Master / Discovery Referee appointed for these
18 proceedings, and his staff.

19 f. Witnesses at depositions or pre-trial proceedings, in accordance
20 with procedures set forth in Paragraphs 11-13.

21 g. Non-party experts and consultants assisting counsel with respect
22 to this action and their secretarial, technical and clerical employees who are actively
23 assisting in the preparation of this action, in accordance with the procedures set forth
24 in Paragraphs 11-13.

25 h. Officers, directors and employees of the Parties hereto who have
26 a need to review Confidential Material to assist in connection with this litigation,
27 subject to the limitations set forth herein;

28 //

1 i. Photocopy service personnel who photocopied or assisted in the
2 photocopying or delivering of documents in this litigation;

3 j. Any Person identified on the face of any such Confidential
4 Material as an author or recipient thereof;

5 k. Any Person who is determined to have been an author and/or
6 previous recipient of the Confidential Material, but is not identified on the face
7 thereof, provided there is prior testimony of actual authorship or receipt of the
8 Confidential Material by such Person; and

9 l. Any Person who the Parties agree in writing may receive
10 Confidential Material.

11 The Parties shall make a good faith effort to limit dissemination of
12 Confidential Material within these categories to Persons who have a reasonable need
13 for access thereto.

14 **UNDERTAKING TO BE BOUND BY PROTECTIVE ORDER**

15 8. Before Discovering Counsel may disclose Confidential Material to any
16 Person described in subparagraphs 7(g) or 7(h) above, the Person to whom disclosure
17 is to be made shall receive a copy of this Protective Order, shall read Paragraphs 1, 4,
18 5, 6, 7, and 8 (including the subparagraphs where applicable) of the Protective Order,
19 shall evidence his or her agreement to be bound by the terms, conditions, and
20 restrictions of the Protective Order by signing an undertaking in the form attached
21 hereto as **Exhibit A** (the “Undertaking”), and shall retain the copy of this Protective
22 Order, with a copy of his or her signed Undertaking attached. Discovering Counsel
23 shall keep a copy of the signed Undertaking for each person described in
24 subparagraphs 7(g) or 7(h) to whom Discovering Counsel discloses Confidential
25 Material.

26 **DEPOSITIONS**

27 9. Those portions of depositions taken by any Party at which any
28 Confidential Material is used or inquired into, may not be conducted in the presence

1 of any Person(s) other than (a) the deposition witness, (b) his or her counsel, and (c)
2 Persons authorized under Paragraph 7 of this Protective Order to view such
3 Confidential Material.

4 10. Counsel for any deponent may designate testimony or exhibits as
5 Confidential Material by indicating on the record at the deposition that the testimony
6 of the deponent or any exhibits to his or her testimony are to be treated as
7 Confidential Material. Counsel for any Party may designate exhibits in which that
8 Party has a cognizable interest as Confidential Material by indicating on the record at
9 the deposition that such exhibit(s) are to be treated as Confidential Material. Failure
10 of counsel to designate testimony or exhibits as confidential at deposition, however,
11 shall not constitute a waiver of the protected status of the testimony or exhibits.
12 Within thirty calendar days of receipt of the transcript of the deposition, or thirty
13 days of the date on which this Protective Order becomes effective, whichever occurs
14 last, counsel shall be entitled to designate specific testimony or exhibits as
15 Confidential Material. If counsel for the deponent or Party fails to designate the
16 transcript or exhibits as Confidential within the above-described thirty day period,
17 any other Party shall be entitled to treat the transcript or exhibits as non-confidential
18 material. For purposes of this Paragraph 10, this Protective Order shall be deemed
19 "effective" on the date on which it has been executed by all counsel for the Parties.

20 11. When Material disclosed during a deposition is designated Confidential
21 Material at the time testimony is given, the reporter shall separately transcribe those
22 portions of the testimony so designated, shall mark the face of the transcript in
23 accordance with Paragraph 3 above, and shall maintain that portion of the transcript
24 or exhibits in separate files marked to designate the confidentiality of their contents.
25 The reporter shall not file or lodge with the Court any Confidential Material without
26 obtaining written consent from the Party who designated the Material as Confidential
27 Material. For convenience, if a deposition transcript or exhibit contains repeated
28 references to Confidential Material which cannot conveniently be segregated from

1 non-confidential material, any Party may request that the entire transcript or exhibit
2 be maintained by the reporter as Confidential Material.

3 **USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER**
4 **COURT PAPERS**

5 12. Any document (including the motion papers themselves) to be
6 submitted to the Court that reveals any Confidential Material shall first be presented
7 to the Court pursuant to a request for filing under seal, in accordance with Local Rule
8 79-5.1. Any documents the Court orders filed under seal shall be handled in
9 accordance with Local Rules 79-5.2 and 79-5.3, to the extent those rules differ from
10 the provisions of this Protective Order, and shall otherwise continue to be governed
11 by this Protective Order. In the event a request to file under seal is denied by the
12 Court, the documents requested to be filed under seal may be filed with the Court not
13 under seal and otherwise in the normal course. This Paragraph 12 shall not apply to
14 documents submitted to the Special Master / Discovery Referee provided that no
15 public record of any such documents is created or maintained.

16 **OBJECTIONS TO DESIGNATION**

17 13. Neither stipulation by a party to the terms of this Order nor failure of a
18 party, at the time it receives materials designated pursuant to this Order, to challenge
19 or object to the designation shall be deemed a waiver of its right to challenge or
20 object to the designations at any later time. Any party may at any time challenge the
21 designation of any Confidential Material under this Order and may request
22 permission to use or disclose such Confidential Material other than as permitted,
23 pursuant to this Paragraph by serving (which may be by email) a written request
24 upon counsel for the Designating Party at least five (5) court days before the date of
25 the proposed disclosure and by providing telephonic notice of such request on the
26 same date as the email request. Such request shall specifically identify the
27 Confidential Material, including Bates label if applicable, sought to be disclosed and
28 the name, title and function of the person to whom the disclosure is desired to be

1 made. The Designating Party shall thereafter respond to the request in writing within
2 five (5) court days after receipt of same. A failure to respond within such time shall
3 constitute consent to the request. If, where consent has been withheld, the parties are
4 subsequently unable to agree on the terms and conditions of disclosure, the matter
5 may be submitted to the Court for resolution by the party seeking disclosure.
6 Disclosure shall be postponed until a ruling has been obtained from the Court.

14. Any discovery disputes concerning the designation of materials c

8 disclosure of documents or information under this Protective Order shall be brought
9 in compliance with Local Rule 37 before the Discovery Referee.

RETURN OF MATERIAL

11 15. Within ninety (90) calendar days after the final settlement or
12 termination of this action, Discovering Counsel shall return or destroy (at the option
13 and expense of Discovering Counsel) all Materials provided by a Producing Party
14 and all copies thereof except to the extent that any of the foregoing includes or
15 reflects Discovering Counsel's work product, and except to the extent that such
16 Material has been filed with a court in which proceedings related to this action are
17 being conducted. In addition, with respect to any such retained work product and
18 unless otherwise agreed to, at the conclusion of this action, counsel for each Party
19 shall store in a secure area all work product which embodies Confidential Material
20 together with all of the signed undertakings they are required to preserve pursuant to
21 Paragraph 8 above, and shall not make use of such Material except in connection
22 with any action arising directly out of these actions, or pursuant to a court order for
23 good cause shown. The obligation of this Protective Order shall survive the
24 termination of this action. To the extent that Confidential Materials are or become
25 known to the public through no fault of the Discovering Party, such Confidential
26 Materials shall no longer be subject to the terms of this Protective Order. Upon
27 request, counsel for each Party shall verify in writing that they have complied with
28 the provisions of this paragraph.

SCOPE OF THIS ORDER

2 16. Except for the provisions regarding post-trial or post-settlement return
3 and destruction of Material, or segregation of work product which embodies
4 Confidential Material, this order is strictly a pretrial order; it does not govern the trial
5 in this action.

6 17. Not later than seven days before trial in the action, Counsel agree to
7 meet and confer concerning the use at trial of Confidential Material.

8 18. Nothing in this Protective Order shall be deemed to limit, prejudice, or
9 waive any right of any Party or Person (a) to resist or compel discovery with respect
10 to, or to seek to obtain additional or different protection for, Material claimed to be
11 protected work product or privileged under California or federal law, Material as to
12 which the Producing Party claims a legal obligation not to disclose, or Material not
13 required to be provided pursuant to California law; (b) to seek to modify or obtain
14 relief from any aspect of this Protective Order; (c) to object to the use, relevance, or
15 admissibility at trial or otherwise of any Material, whether or not designated in whole
16 or in part as Confidential Material governed by this Protective Order; or (d)
17 otherwise to require that discovery be conducted according to governing laws and
18 rules.

19 19. Designation of Material as Confidential Material on the face of such
20 Material shall have no effect on the authenticity or admissibility of such Material at
21 trial.

22 20. This Protective Order shall not preclude any Person from waiving the
23 applicability of this Protective Order with respect to any Confidential Material
24 Provided by that Person or using any Confidential Material Provided by that Person
25 or using any Confidential Material owned by that Person in any manner that Person
26 deems appropriate.

1 21. This Protective Order shall not affect any contractual, statutory or other
2 legal obligation or the rights of any Party or Person with respect to Confidential
3 Material designated by that Party.

4 22. The restrictions set out in the Protective Order shall not apply to any
5 Material which:

- a. At the time it is Provided is available to the public;
 - b. After it is Provided, becomes available to the public
failure to act, of the Discovering Party; or
 - c. The Discovering Party can show
 - i. Was already known to the Discovering Party
receipt of the Confidential Material in this or prior litigation; or
 - ii. Was received by the Discovering Party, after the
ited as Confidential Material hereunder, from a third party having
uch disclosure.

15 23. If at any time any Material protected by this Protective Order is
16 subpoenaed from the Discovering Party by any Court, administrative or legislative
17 body, or is requested by any other Person or entity purporting to have authority to
18 require the production of such material, the Party to whom the subpoena or other
19 request is directed shall immediately give written notice thereof to the Producing
20 Party with respect to Confidential Material sought and shall afford the Producing
21 Party reasonable opportunity to pursue formal objections to such disclosures. If the
22 Producing Party does not prevail on its objections to such disclosure, the Discovering
23 Party may produce the Confidential Material without violating this Protective Order.

MODIFICATION

25 24. The Parties reserve the right to seek, upon good cause, modification of
26 this Protective Order by the Court.

INADVERTENT PRODUCTION

1 25. Inadvertent production or disclosure of documents or information
2 subject to the attorney-client privilege, work product immunity or any other
3 applicable privilege shall not constitute a waiver of, nor a prejudice to, any claim that
4 such or related material is privileged or protected by the work product immunity or
5 any other applicable privilege. A Designating Party may notify the Discovering
6 party in writing that produced documents or information are subject to attorney-client
7 privilege, work product immunity or any other applicable privilege. All such
8 documents or information, including all copies thereof, shall be returned to the
9 Designating Party within five (5) business days. No use shall be made of such
10 documents or information during deposition or at trial, nor shall such documents or
11 information be shown to anyone who has not already been given access to them
12 subsequent to the request that they be returned. The Designating Party shall provide
13 a privilege log identifying such documents or information. The Discovering Party
14 may move the Court for an Order compelling production of any such documents or
15 information. The motion shall be filed under seal and shall not assert as a ground for
16 production the fact of the inadvertent production, nor shall the motion disclose or
17 otherwise use the content of the inadvertently produced document or information
18 (beyond any information appearing on the above-referenced privilege log) in any
19 way in connection with any such motion.

20

21

22 IT IS SO GRANTED.

23

24

Dated: 1/9/2012

25

26

27

28

MARC L. GOLDMAN

HONORABLE MARC L. GOLDMAN
UNITED STATES MAGISTRATE JUDGE

Exhibit A

NONDISCLOSURE AGREEMENT

I [name], [position of employment], hereby acknowledge that any information provided to me is subject to the terms and conditions of the Protective Order in Case Number SACV11-01161-DOC (MLGX), pending in the United States District Court for the Central District of California. Having been given a copy of the Protective Order, and having read and understood its contents, I hereby expressly agree to be bound by the terms and provisions thereof. Further, I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

DATE: _____ BY: _____